

REMARKS

The office action of 3 May 2005 mentioned “that a pulley has not positively been claimed in the above claims”. In response, amendments have been made to claims 3, 7, 13, 14, and 16 to make it clear that a pulley is intended to be included in the subject matter of these claims.

The office action also stated that a handle is not positively claimed, and claims 1 and 8 have been amended to make it clear that a handle is included in the claimed subject matter.

The office action mentioned that “claims 4, 12, 16, and 23-31 are objected to as being dependent upon a rejected base claim”, but would be allowable if rewritten. Of this group, claims 23 and 26 are independent claims in themselves, and have not been rejected on art. Therefore, claims 23-27 plus claims 30 and 31 appear to be allowable, leaving only claims 4, 12, 16, 28, and 29 as dependent upon rejected base claims.

The office action rejected claims 1, 2, 3, 5-11, and 13-15 as anticipated by Cluff (FIG. 6). In explaining this rejection, the office action stated “that the examiner is only required to provide prior art, which is capable of being position (*sic*) over a pulley, and configured as claimed in the claims.” This misstates the standard for an anticipatory reference. The question is not whether elements suggested by the reference can be rearranged to resemble the subject matter claimed, but is whether the reference itself actually suggests the subject matter claimed.

Here, independent claims 1 and 8 each define subject matter that is not suggested by the Cluff reference. Claim 1 states that the tension system defined in the first three paragraphs also includes a second length of a tension element having a second connection to the handle and extending between the upper tension region and a lower tension region positioned at a level lower than the hips of the exerciser. The Cluff reference does not suggest any such lower tension region and does not suggest any tension element extending between an upper tension region and the claimed lower tension region while being connected to a handle.

Claim 8, in somewhat different words, requires that a second cord length extend from the handle to the upper tension region and from the handle to a lower tension region arranged at a level below the hips of the person exercising. Again, none of the tension elements or cord lengths suggested by Cluff extend from the handle to a lower tension region as claimed. Nor do any

Cluff resistance elements extend between the claimed upper and lower tension regions while connected to a handle.

Since Cluff does not suggest any resistance connection region below the hips of an exerciser and does not suggest tension elements connected between upper and lower tension regions as claimed while connected to a handle being moved in a simulated golf swing, Cluff cannot anticipate the subject matter of claims 1 and 8. Furthermore, since Cluff suggests only an upper tension region, Cluff is unable to make any distinction between resistance to downward movement of a handle and resistance to lateral movement of a handle. Moreover, from lack of having tension elements or cord lengths connected between upper and lower tension regions as claimed, Cluff also lacks any recognition of the possibility of downward resistance and separate lateral resistance being combined to maximize when the handle moves into a hitting region.

For all these reasons, the rejection on Cluff can now be withdrawn, and since the Cluff reference provides the only rejection on prior art, the claims as amended can then be allowed. Since this conclusion seems compelling, applicant's attorney attempted a telephone interview with the examiner. Calling the number written in the office action results in a recorded Patent Office message that the number is unassigned.

The office action stated that "in regard to claim 11 Cluff is capable of being arranged in a loop." Cluff itself has not made any suggestion for arranging any of its resistance tubes in a loop. Cluff's suggestion is clearly limited to connecting all resistance elements between a handle and an upper tension region arranged at about eye level of the person exercising. See Cluff, Column 7, lines 26-39 explaining attachment mechanism 60 to which all resistance tubes are attached at about eye level. This also applies to the attachment used in the arrangement of FIG. 6 as explained in Column 8, lines 10-24.

The office action mentioned that "elements 22 and 32 are considered as low friction elements." Cluff reference number 22 refers to an end of a handle rod 12 (Column 4, line 44), and Cluff reference number 32 is a section of bracket 40, as explained at Column 4, lines 50-54. Applicant's attorney does not understand how elements 22 and 32 can be viewed as low friction. Nevertheless, claim 5 has been amended to make the arrangement of the claimed low friction element more clear.

The specific reference in the office action to FIG. 6 of Cluff is also puzzling. The exercise explained for FIG. 6 in Cluff Column 8, lines 37-49 does not move the handle through a simulated golf swing. All the tension elements 50 extend from the handle to the same attachment region 60 arranged at about eye level, and the exerciser merely repeatedly pulls the handle away from the eye level attachment region in an exercising motion that builds strength but does not relate any of the muscles being worked to the motions involved in a golf swing.

For all these reasons, the rejection on Cluff can be withdrawn, resulting in allowability of rejected claims 1-16, plus 30 and 31. This leaves all the claims remaining in the application allowable, and such action is requested.

"Recognizing that Internet communications are not secured, I hereby authorize the PTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file."

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